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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,376	11/26/2003	Alan D. Olin	70494.6 (M-16842-4P US)	8032
33605 7590 01/26/2010 Haynes and Boone, LLP IP Section 2323 Victory Avenue SUITE 700 Dallas, TX 75219				
EXAMINER PASCUA, JES F				
ART UNIT 3782		PAPER NUMBER		
MAIL DATE 01/26/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/723,376

Applicant(s)

OLIN ET AL.

Examiner

Jes F. Pascua

Art Unit

3782

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 5-13, 15, 17-24, 32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5-9, 11, 12, 15, 17-21, 23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 10, 13, 22, 32 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-544)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 10, 13, 22, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Document No. 9-2488 to Ishigaki et al. and U.S. Patent No.6,007,246 to Kinigakis et al.

Ishigaki et al. discloses a bag comprising a top end having a seal, a bottom end, first and second side edges on opposite sides of the bag each extending between the top and bottom ends, the first side edge having a non-gusseted portion located proximate to the top end, forming an acute included angle with the top end (see Figs 2, 4, 9 and 10) and being substantially perpendicular to and longer than the bottom end. A pour spout is located along the non-gusseted portion and oriented substantially parallel to the first side edge to provide access to an opening. However, Ishigaki et al. does not show the bottom end having a generally ovoid shape. Kinigakis et al. discloses that it is known in the art of dispensing bags to provide a bottom end that is generally ovoid in shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bottom end of Ishigaki et al. with the ovoid-shaped, bottom end of Kinigakis et al., in order to permit the bag to rest in an upright position.

Furthermore, Ishigaki et al. discloses the claimed device, as discussed above. Ishigaki et al. especially discloses the pour spout and opening being initially accessed by a removable strip formed along a line of cutting (6) that is parallel to the first side edge. However, Ishigaki et al. does not disclose the opening being reclosable by a reclosable fastener in the pour spout. Kinigakis et al. discloses that it is known in the art to provide a reclosable, zipper fastener in the pour spout of an analogous bag. Kinigakis et al. further discloses the reclosable, zipper fastener being provided such that it is parallel to weakening lines (50) that form a removable tear strip (60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pour spout of Ishigaki et al. with a reclosable, zipper fastener that is parallel to the line of cutting forming the removable strip, as suggested by Kinigakis et al., in order to permit the opening to be reclosed. Providing the pour spout of Ishigaki et al. with the reclosable, zipper fastener of Kinigakis et al., as discussed above, meets the recitation "a reclosable fastener provided over a reclosable opening located proximate to the top end, forming an included angle of less than 90 degrees, being closer to the top end than to the bottom end and being substantially vertical when the bag is in the generally upright position".

Regarding claims 32 and 33, Ishigaki et al. discloses the claimed invention, as discussed above, except for the strip being removable by cutting instead of tearing. Kinigakis et al. discloses that an analogous strip may be removed by cutting or by tearing along weakening lines (see column 8, lines 22-25). Therefore, because these

two removing means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the cutting lines of Ishigaki et al. for weakening lines. Replacing the cutting lines Ishigaki et al. for weakening lines, as discussed above, meets the recitations "a tear strip proximate to the reclosable fastener" and "a tear strip proximate to the reclosable opening".

Response to Arguments

3. Applicant's arguments with respect to claims 1, 10, 13, 22, 32 and 33 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jes F. Pascua/
Primary Examiner, Art Unit 3782